REMARKS

The Office examined claims 1-23 and rejected same. With this paper, the claims are unchanged.

Change to the specification

With this paper, the specification is changed to correct an obvious typographical error (a missing close parenthesis).

Rejections under the judicially created doctrine of obviousness-type double patenting

At section 4 of the Office action, claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting, based on U.S. Pat. App. having Ser. No. 10/648,778 (the '778 application).

Applicant respectfully submits that per the MPEP at 804 (B)(1), "Obviousness-type (Non-statutory Double Patenting)," an Office action rejecting claims based on obviousness-type double patenting is to provide the same analysis as used in a rejection under 35 USC §103. At 804(B)(1), the MPEP explains:

> Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103 are employed when making an obvious-type double patenting analysis.

Applicant respectfully submits that the required analysis is missing. The analysis requires, as a first step, determining the scope and content of a claim and the prior art relative to a patent claim [or application claim in case of a provisional rejection) and the prior art relative to a claim in the application at issue. Applicant respectfully points out that all claims of the '778 application recite at least either a step (or corresponding means) in which a UE device signals, in uplink,

information indicating one of a plurality of cells as a scheduling cell, or a step (or corresponding means) in which each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands determines whether it is in control of the scheduling cell, and issues scheduling commands for controlling the pointer in the UE device if it is in control, but issues no such commands if it determines it is not in control of the scheduling cell. By contrast, all claims of the invention recite at least either a step (or corresponding means) in which a node of a wireless communication system issues to a UE device a change command in response to a change request (to change the value of a data rate pointer) by the UE device, the node issuing the change command (to change the value of the pointer) based on predetermined rules; or a step (or corresponding means) in which the UE device adjusts the data rate pointer according to the change command and based on predetermined rules for interpreting the change command; characterized in that either the predetermined rules used by the node in responding to the change request differ depending on the current value of the data rate pointer, or in that the UE interprets the change command based on predetermined rules that differ depending on the current value of the data rate pointer. Applicant respectfully submits that although both inventions, as claimed, have generally to do with a data rate pointer indicating a maximum allowed rate of transmission in uplink, the steps/ recited in the two applications have to do with entirely different aspects of the overall process by which the data rate pointer is maintained, or changed from one value to another. Whereas the '778 application includes claims directed to which node is to issue commands affecting such a data rate pointer, the instant application includes claims directed to what commands are issued. Applicant respectfully submits that since the two sets of claims are to two entirely different aspects of the overall

process, the claims of the instant application cannot fairly be said to be obvious in view of the claims of the '778 application.

Accordingly, applicant respectfully requests that the rejections under obvious-type double patenting be reconsidered and withdrawn.

Conclusion

For all the foregoing reasons it is believed that all of the claims of the application are in condition for allowance and their passage to issue is earnestly solicited.

Respectfully submitted,

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Date

James A. Retter
Registration No. 41,266

WARE, FRESSOLA, VAN DER SLUYS
& ADOLPHSON LLP
755 Main Street, P.O. Box 224
Monroe, CT 06468-0224

tel: (203) 261-1234
Cust. No.: 004955